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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/624,852

Filing Date: July 22, 2003

Appellant(s): BARSNESS ET AL.

James R. Nock
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/21/08 appealing from the Office action
mailed 2/28/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,958,821	McIntyre	10-2005
6,965,682	Davis et al.	11-2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-10, 14-17, and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over McIntyre (US 6,958,821) in view of U.S. Patent No. 6,965,682 to Davis et al.

Regarding claim 1, McIntyre discloses an apparatus, comprising: at least one processor (see Figs. 2A and 2B and column 5 lines 12-31), a memory coupled to the at least one processor (see Fig. 4, column 4 lines 1-12, column 5 lines 39-66, and column

8 lines 1-48, reference states that kiosk **170** is an example of an image capable computer **100**, therefore kiosk **170** would also contain the same elements of computer **100**, such as memory, which is also eluded to frequently throughout the reference), at least one digital image residing in the memory (see Fig. 4, column 4 lines 1-12, and column 8 lines 1-48), and an advertising generator residing in the memory and executed by the at least one processor, the advertising generator analyzing a selected digital image for one or more consumer identifying characteristics, and generating an advertisement targeted to a consumer based on the one or more consumer identifying characteristics (see column 2 lines 22-40, column 8 lines 26-48, 56-59, and 63-65, and column 11 line 57-column 12 line 7), wherein the analyzing of the selected digital image involves object recognition within the selected digital image (see column 2 lines 30-36, column 5 lines 39-52, column 8 lines 5-10, and column 9 line 53-column 10 line 6), text recognition within the selected digital image (see column 2 lines 30-36, column 5 lines 39-52, column 8 lines 5-10, and column 9 line 53-column 10 line 6), and storing metadata associated with the digital image (see column 18 line 57-column 19 line 6).

McIntyre does not disclose expressly reading consumer characteristic metadata associated with the digital image.

Davis discloses reading consumer characteristic metadata associated with the digital image (see column 2 lines 20-25 and 33-40, column 2 line 62-column 3 line 14, and column 3 lines 28-37).

Regarding claim 10, McIntyre discloses a method for advertising to a consumer based on the content of a digital image associated with the consumer, the method

comprising the steps of: analyzing the digital image for one or more consumer identifying characteristics (see column 2 lines 22-40, column 8 lines 26-48, 56-59, and 63-65, and column 11 line 57-column 12 line 7), the analysis comprising the steps of: performing objection recognition within the digital image (see column 2 lines 30-36, column 5 lines 39-52, column 8 lines 5-10, and column 9 line 53-column 10 line 6), performing text recognition within the digital image (see column 2 lines 30-36, column 5 lines 39-52, column 8 lines 5-10, and column 9 line 53-column 10 line 6), and storing metadata associated with the digital image (see column 18 line 57-column 19 line 6), and generating an advertisement targeted to the consumer based on the one or more consumer identifying characteristics (see column 2 lines 22-40, column 8 lines 26-48, 56-59, and 63-65, and column 11 line 57-column 12 line 7).

McIntyre does not disclose expressly reading consumer characteristic metadata associated with the digital image.

Davis discloses reading consumer characteristic metadata associated with the digital image (see column 2 lines 20-25 and 33-40, column 2 line 62-column 3 line 14, and column 3 lines 28-37).

Regarding claim 17, McIntyre discloses a program product comprising: an advertising generator that analyzes a selected digital image for one or more consumer identifying characteristics, the analysis comprising the steps of: performing objection recognition within the digital image (see column 2 lines 30-36, column 5 lines 39-52, column 8 lines 5-10, and column 9 line 53-column 10 line 6), performing text recognition within the digital image (see column 2 lines 30-36, column 5 lines 39-52, column 8 lines

5-10, and column 9 line 53-column 10 line 6), and storing metadata associated with the digital image (see column 18 line 57-column 19 line 6), and generates an advertisement targeted to a consumer based on the one or more consumer identifying characteristics and computer-readable signal bearing media bearing the advertising generator (see column 2 lines 22-40, column 8 lines 26-48, 56-59, and 63-65, and column 11 line 57-column 12 line 7).

McIntyre does not disclose expressly reading consumer characteristic metadata associated with the digital image.

Davis discloses reading consumer characteristic metadata associated with the digital image (see column 2 lines 20-25 and 33-40, column 2 line 62-column 3 line 14, and column 3 lines 28-37).

McIntyre & Davis are combinable because they are from the same field of endeavor, performing processes based on the analysis of image data.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the reading of hidden watermarks (metadata) that cause a certain process to be performed, as described by Davis, with the system of McIntyre because McIntyre discloses a system to generate advertising based on analyzed image data and McIntyre further acknowledges the need to store metadata associated with the image data, such metadata being image identifier/locator which act as a reference to the digital image file and an image name/id and Davis discloses an example in which embedded watermarks are used in advertising and the reading of such a watermark would prompt the execution of an output process, such as playing a video or printing an

image. Watermarking is well known and commonly used in the art. Therefore, it would have been obvious to a person of ordinary skill in the art to combine the teachings of McIntyre and Davis to arrive at the instant invention.

Therefore, it would have been obvious to combine Davis with McIntyre to obtain the invention as specified in claims 1, 10, and 17.

Regarding claim 5, McIntyre further discloses wherein the apparatus is a photo kiosk (see Fig 2A **170**).

Regarding claim 6, McIntyre further discloses wherein the apparatus is a digital minilab (see column 9 lines 14-30).

Regarding claims 7 and 15, McIntyre further discloses wherein the generated advertisement is a screen display (see Fig. 1).

Regarding claims 8 and 16, McIntyre further discloses wherein the generated advertisement is a coupon (see column 8 lines 63-65).

Regarding claim 9, McIntyre further discloses wherein the generated advertisement is a photo jacket insert (see column 8 lines 40-48).

Regarding claim 14, McIntyre further discloses creating a mapping from one or more potential consumer identifying characteristics to at least one associated advertisement, if at least one consumer identifying characteristic exists within the digital image, identifying at least one associated advertisement to display to the consumer via the mapping (see column 9 line 53-column 11 line 22, column 13 lines 1-48, column 14 lines 18-38, and column 19 line 24-column 21 line 8) and presenting the at least one

associated advertisement to the consumer (see Fig. 1 and column 8 lines 56-59 and 63-65).

Regarding claim 18, McIntyre further discloses wherein the computer-readable signal bearing media comprises recordable media (see Fig. 4).
Regarding claims 23 and 24, Davis further discloses wherein the consumer characteristic metadata is provided in the form of a digital watermark (see column 2 lines 20-25 and 33-40, column 2 line 62-column 3 line 14, and column 3 lines 28-37).

(10) Response to Argument

Applicant's arguments have been fully considered but they are not persuasive. Appellant asserts that neither McIntyre or Davis disclose "reading consumer characteristic metadata associated with the digital image". The examiner respectfully disagrees as the combination of McIntyre and Davis does disclose "reading consumer characteristic metadata associated with the digital image". Particularly, McIntyre discloses a system which can make intelligent advertising decisions by analyzing the image content of consumer digital images (see column 2 lines 14-17). The digital images relate to a single person, a single family, or group of related people and relate to one or more activities of importance to the person or people who are either photographed in the digital images or photographed by the person or people (see column 10 lines 22-41). McIntyre also discloses perceptual significant feature-based image feature representations, such as color or texture features of the digital image. McIntyre refers to these features as metadata and also states that an image feature

representation contains image identifier/locator and image name/id (metadata), and that the metadata is associated with the digital images and stored (see column 18 line 57-column 19 line 20). Further, McIntyre states that perceptual significant features are used in the image comparison phase between query digital images (consumer input images) and database digital images to generate distribution images (intelligent advertisements). Therefore, since the metadata associated with query digital images (consumer input images) is used to generate an advertisement and the metadata (perceptual significant feature) is related to a person or people in the image or who created the image, then it follows that the metadata is consumer characteristic metadata. Davis discloses embedding a watermark within a digital image. The watermark is analyzed and can be used to cause additional content or functionality to be obtained, such as delivery of a video, Macromedia Shockwave presentation, etc., from one device to another device (see column 3 lines 1-14 and 29-36). The appellant states on page 10 lines 15-28 of the specification of the instant invention that digital watermarking technology is a well-known technique for hiding or embedding information (such as metadata) within a digital image. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, when presented with the teachings of McIntyre and Davis and the well-known watermarking technique, to modify the system of McIntyre to analyze a watermark (containing embedded consumer metadata) to aid in the intelligent advertising. Thus, if an image name was associated with a digital image, for example “trip to Hawaii”, and embedded within the digital image, analysis of the image name would lead to an intelligent advertising decision and output

an advertisement appropriate to the digital image, such as a deal on airfare or hotel accommodations to Hawaii.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Mark R. Milia/

Examiner, Art Unit 2625

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